ORDER

Plaintiff-appellant Brewster commenced this diversity action on June 16, 1969 in the district court for the middle district of Florida. The action was transferred to the district court for the western district of Wisconsin. Defendant moved to dismiss for failure to state a claim. The district court entered an order and judgment dismissing the complaint as to counts 1 and 2 with prejudice and with costs and dismissing it as to count 3 without prejudice and with costs.

It appears from the complaint that plaintiff owned a motel property near Ashland, Wisconsin at which he desired electric utility service. Defendant is an electric power public utility serving the area.

Count 1 claimed damages for a breach of contract to provide service. The contract was signed May 6, 1958, ran for five years, and was allegedly breached in 1961 and thereafter. The district court was clearly correct in ruling that count 1 was barred by the Statute of Limitations because the complaint showed on its face that any breach occurred more than six years before the action was begun.

Count 3 claimed damages "resulting from an alleged conspiracy by numerous persons, cooperative, and corporations to prevent the lawful operation of a motel by the plaintiff." The defendant is the only conspirator identified. A number of other vague averments repeat in other terms the assertion that defendant conspired with others by action, inaction, or acquiescence, but give no more specific

information. The district court concluded that count 3 failed to comply with Rule 8 (a) F. R. C. P. in that it does not contain a short and plain statement of the claim showing that plaintiff was entitled to relief. The dismissal of this count was without prejudice, and we deem it well within proper bounds.

Count 2 claimed treble damages under Sec. 196.64, Wis. Stats., for defendant's alleged failure to perform its duty under Sec. 196.03 to render service, and averred that defendant refused to provide electrical service from 1961 to 1965. We are unable to sustain the ruling that count 2 shows on its face that it is barred, since it appears to claim refusal of service up to some date in 1965, less than six years before the action was begun. The district court stated that it was not deciding whether a cause of action was otherwise adequately stated in count 2 and the parties have not briefed the question on appeal. We do not decide it except to note that a cause of action for refusal of service has been recognized in Wisconsin. See Krom v. Antigo Gas Co. (1913), 154 Wis. 528, 140 NW 41, 143 NW 163, and Shepard v. Milwaukee Gas Light Co. (1857), 15 Wis. 318, 70 Am. Dec. 479. Accordingly the dismissal of count 2 will be reversed.

We find no merit in any other contentions of plaintiff: The district court did not abuse its discretion in permitting defendant to file its motion ten days late. Plaintiff showed no valid ground for transfer of the action to a different district. His affidavit of prejudice of the judge was late and insufficient. Having deposited security for costs he has no standing to complain that security was required.

Insofar as the judgment awarded costs to defendant and dismissed count 2, it is reversed and the cause remanded for further proceedings. In all other respects, the judgment is affirmed. No costs are awarded to either party on appeal.

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